IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal No. 809 of 2001
(Old No. 784 of 2000)

U.P. Awas and Vikas Parishad,
Lucknow.

..... Appellant

Versus

1. Kishori Chandra
   S/o Sri Shiv Dutt
2. Kishan Chandra
   S/o Sri Shiv Dutt
3. Jeevanand
   S/o Sri Shiv Dutt
   All R/o Talla Cheenakhan,
   Patti Khashparja, District Almora.
3. The Collector, Almora.

..... Respondents

Mr. K.S. Mehta, learned counsel for the appellant.
Mr. A.D. Tripahi, learned counsel for claimants –respondents.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 54 of the Land Acquisition Act, 1894, is directed against the judgment and award dated 10.10.1988, passed in Land Acquisition Reference Case No. 47 of 1988, whereby the learned District Judge, Almora, has directed that solatium shall be paid to the claimants at the rate of 30% instead of 15% with interest at the rate of 9% per annum on the enhanced sum.

2) Brief facts of the case are that a Notification dated 16.04.1974 was issued under Section 28 of the U.P. Awas Evam Vikas Parishad Adhiniyam read with Section 4 of the Land Acquisition Act, 1894. Another Notification under

Section 32 of the aforesaid Act was issued on 30.01.1980, which was published in the Gazette dated 19.04.1980 for acquisition of land in question. The land acquired under aforesaid Notification included the land measuring 7 nali 11 muthi belonging to the claimants namely, Kishori Chandra, Kishan Chandra and Jeevanand, situated within the limits of Nagar Palika, Almora. Some fruit trees were also standing over the said land. The market value of the said land was assessed at Rs. 1,846.16 paise per nali by the Special Land Acquisition Officer. It appears that a reference was got made under Section 18 of the Land Acquisition Act, 1894, claiming the enhanced compensation at the rate of Rs. 5,000/- per nali.

3) Learned District Judge, Almora framed following issues in the matter:

1. *What was the market value of the land in question on the date of Notification under Section 4 of the Land Acquisition Act?*
2. *What is the value of the fruit bearing trees standing on the land, and to what amount of compensation, the claimant is entitled on this count?*
3. *To what amount of compensation the claimant is entitled?*

4) Learned District Judge after recording the evidence and hearing the parties, came to the conclusion that the Special Land Acquisition Officer has rightly assessed the value of the land at Rs. 1,846.16 paise per nali. It was further held by the lower court that the claimants are not

entitled to the enhanced compensation by them. Regarding the standing trees, the same according to him, were included in the value assessed by the Special Land Acquisition Officer. The reference court also rejected the compensation claimed on account of construction of wall as the walls existed even in the year 1974, and before the acquisition proceedings initiated, and were already considered in assessing the market value of the land. However, the learned reference court directed that the solatium shall be paid to the claimants at the rate of 30% instead of 15%, awarded by the Special Land Acquisition Officer. In this connection, the reference court relied on the amended Section 23(2) of the Land Acquisition Act, 1894. Aggrieved by which, this appeal has been filed by the U.P. Awas and Vikas Parishad, for whom the land was acquired.

5) I heard learned counsel for the parties and perused the record.

6) Admittedly, the land was acquired in the year 1974 and the final Notification was issued in the year 1980. It is also clear from the record, that the Special Land Acquisition Officer gave its award in the year 1980. In this connection, it is pertinent to mention here, the relevant provision of law as contained in Section 23(2) of the Land Acquisition Act. Section 23(2) of the Land Acquisition Act, 1894 as amended vide Act No. 68 of 1984 w.e.f. 24.09.1984, applicable to the proceedings pending on or after 30.04.1982, reads as under:

> *"(2). In addition to the market value of the land, as above provided, the court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition."*

Under the above amended provision, solatium was sought to be paid got enhanced from 15% to 30%. In ***Union of India and another Vs. Raghubir Singh and others reported in (1989) 2 S.C.C. 754,*** the Apex Court has held that the amended provision does not apply to the awards, made by the Collector prior to April 30, 1982. A Division Bench of this Court has followed the same principle in ***First Appeal No. 754 of 2001; U.P. Avas Evam Vikas Parishad, Lucknow Vs. Harnam Singh and others,*** decided on 22.11.2005. In the above circumstances, and in view of the above position of law, the reference court has erred in law by enhancing the solution from 15% to 30% in the matter, in which the Special Land Acquisition Officer had already made its award in 1980 i.e. prior to 30.04.1982, whereafter, the benefit was available to the claimants of the amended Section 23(2) of aforesaid Act.

7) Therefore, this appeal deserves to be allowed to the extent that the solatium payable to the claimants shall be at the rate of 15% and not at the rate of enhanced 30% Accordingly, the appeal stands disposed of and allowed.

(Prafulla C. Pant, J.)

Dt. 10th March, 2006.
H. Negi